



3 North Terrace, Embleton
Alnwick NE66 3XP
enquiries@a2zlicensing.co.uk
Tel: 01665 576577
www.a2zlicensing.co.uk

Ms Suzanne Fisher
Service Delivery Manager
Public Protection
Telford & Wrekin Council
Darby House
PO Box 212
Telford
TF3 4LB

Our Ref: DBW / TPHOA
Your Ref:
Date: 8 September 2010
Please ask for: David Wilson

**By email only to
suzanne.fisher@telford.gov.uk**

Dear Ms Fisher,

**Licensing Committee – Wednesday, 8 September 2010
Item 5 – Policy for determining . . . licences . . . with relevance to convictions**

I have been instructed by Telford Private Hire Operators' Association in connection with the above and should be obliged if you would kindly ensure that a copy of this letter is circulated to all Members of the Licensing Committee at this evening's meeting.

As I am sure you appreciate, responses to agenda items are inevitably "last minute", because of the short period of time between the date of publication of the agenda and a meeting date and, in this case, was compounded by the fact the association had to formulate its own view on matters and then instructed me to respond on their behalf. In any event, the association and I apologise for any inconvenience that may be caused to officers or Members by the lateness of this representation.

The association should wish for Licensing Committee to know that they wholly support the existence and regular review of, in common parlance, a "convictions policy". The association agrees with the Council that a policy of this nature provides guidance to those in, or wishing to join the trade; officers; Members; and others who are involved, or have an interest in such matters.

Whilst it is not the association's wish to go through each and every apparent error in the policy, the fact that the word "licence" adopts the American spelling of the word with an 's' is unfortunate when the document is produced by the Council's licensing team. Other minor errors relate to the incomplete citing of the reference to the "disclosure of criminal convictions" guidance, which was a joint circular issued by the Department of Transport and the Home Office in 1992. The Home Office's circular reference number for this document is 13/92. There is an inconsistent use of words, for example "major traffic offences" are seemingly referred to both as "major" and "serious", if the association's assumption is correct that these words are referring to

David B Wilson
Licensing Consultant, Mediator & Trainer

Mobile: 07794 776383
david.wilson@a2zlicensing.co.uk

the same categorisation of offence. Finally, there is reference to The Rehabilitation of Offenders Act 1974 (Exemptions) (Amendment) Order 2002, which ought properly to be a reference to The Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (as amended), because the 1975 order was amended by the 2002 Order and not replaced by it.

The association is primarily concerned about the following substantive matters:

- There is a lack of clarity as to which types of licence the policy relates, the levels of CRB (Criminal Records Bureau) checks to be undertaken for different types of licence, and the relevance of convictions for the different types of licence. The 1992 Department of Transport and Home Office circular was solely concerned with driver licensing, whereas the Council has (and is) attempting to apply the same (or very similar) requirements to some (or all) other types of taxi licence.
- The attached email from the CRB clearly states and explains that the position of hackney carriage or private hire vehicle driver is one that, by virtue of the aforementioned exemption orders to The Rehabilitation Act, are exempt employments that entitle a licensing authority to obtain a Standard CRB Disclosure. The Council's current and draft policy wrongfully (and possibly unlawfully or illegally) requires every applicant for a driver's licence to submit themselves to an Enhanced CRB Disclosure. As the positions of hackney carriage and private hire vehicle drivers are not contained in Part V of the Police Act 1997, a licensing authority can only obtain an Enhanced CRB Disclosure if an individual driver has contact with children or vulnerable adults of such a nature and frequency that their contact is also regulated by the Safeguarding Vulnerable Groups Act 2006.
- Whilst it is accepted that the Council is prohibited from granting a private hire operator's licence to a person (or company) unless satisfied they (or it and / or its directors, etc) are "fit and proper", a licensing authority has no legal right to seek anything more than a Basic CRB Disclosure, because the "occupation" of private hire operator is not one contained in any exemption order to The Rehabilitation of Offenders Act 1974. Currently, the Council wrongfully (and possibly unlawfully or illegally) requires every applicant for a private hire operator's licence to submit themselves to an Enhanced CRB Disclosure. Whatever the view of the association and Members of the Licensing Committee, the Council cannot act contrary to law. However, the policy fails to make clear how relevant a particular conviction might be to a person who applies to be a private hire operator as opposed to a hackney carriage or private hire vehicle driver. For example, I rhetorically ask whether motoring convictions are relevant to an applicant for a private hire operator's licence, because the sole activity for which a licence is granted is "in the course of business, to make provision for the invitation and acceptance of bookings for a private hire vehicle". If such convictions are not relevant to an applicant for a private hire operator's licence, the policy should make that clear.
- It is particularly unclear as to what the Council's proposed position might be in relation to applicants for either hackney carriage proprietor or private hire vehicle licences. Currently, the Council wrongfully (and possibly unlawfully or illegally) requires every applicant for a vehicle licence to submit themselves to an Enhanced CRB Disclosure. Again, the position (and it would be difficult to describe it as an "occupation") is not one contained in any exemption order to The Rehabilitation of

Offenders Act 1974 and accordingly only a Basic CRB Disclosure could be required by a licensing authority. What relevance any convictions might have to the appropriateness of any person holding a vehicle licence (as distinct to being a driver or a private hire operator) is not alluded to in the policy.

- The current draft policy seems to erroneously suggest that the Council may, using the powers for immediate suspension or revocation introduced into the Local Government (Miscellaneous Provisions) Act 1976 by amendment pursuant to the Road Safety Act 2006, immediately suspend or revoke a private hire operator's licence. The immediacy powers only apply to the suspension or revocation of a driver's licence and do not even extend to a refusal to renew a driver's licence. The policy ought to be revised to make this legislative distinction clear.
- The association questions whether some offences are correctly classified and / or whether the period required for what might (confusing be called) rehabilitation is appropriate. For example, the policy currently suggests that a person with a conviction for rape should not be licensed for a period of "at least 3 to 5 years". The association respectfully suggests that anyone with such a conviction ought not to be licensed for a very significant period of time, if ever. Coincidentally, in this regard the policy refers to "adults with learning disabilities", which seems to wholly overlook and exclude persons with physical disabilities. Might I suggest the appropriate wording ought to be adopted from the Safeguarding Vulnerable Groups Act 2006, namely "vulnerable adults"?
- The introduction to the policy makes it clear that it is intended that the policy will also apply to existing licence holders, as well as applicants. Such an approach certainly has the appearance of consistency and fairness, but that is not necessarily the case in relation to many (but not all) of the motoring offences. The current wording of the policy fails to expressly make provision for the taking into account the amount of driving undertaken in any particular period by an applicant or a licensed driver. The inequality and injustice will, I hope, become clear by way of an example. If an applicant who drives only 10,000 miles a year is convicted of speeding approximately every five years, any conviction may no longer be "live" and may not even appear on their driving licence / record as at the date of application for a driver's licence. On the other hand, a licensed driver who drives 50,000 miles a year and who is convicted of speeding on average every two years appears to be the less safe driver, because they attract a conviction every two years. However, the licensed driver is being convicted at intervals of 100,000 miles, whereas the applicant is being convicted at every 50,000 miles. On that basis, it might be suggested the licensed driver is twice as safe as the applicant, although that is clearly not the reality. In essence, the point I make on behalf of the association is that the policy ought to recognise that the amount of driving undertaken is an equally relevant consideration as to the amount of time that passes between convictions.

In view of the repeated allegations herein of illegal activity by or on behalf of the Council in accessing highly confidential information to which it is not entitled, I trust Licensing Committee will defer the determination of this matter until such time as the Council's lawyers and / or other agencies have unequivocally stated what entitlement, if any, the Council has to obtain CRB Disclosures for certain applicants.

Finally, I would be most obliged if, following this evening's meeting, you or one of your officers would kindly write to me to advise of the decision of Licensing Committee.

Yours sincerely,

A handwritten signature in cursive script that reads "David B. Wilson".

David B Wilson

Cert HELL, MIoL, MBII.tp

Licensing Consultant, Mediator and Trainer

From: Customer Services [mailto:CustomerServices@crb.gsi.gov.uk]
Sent: 06 August 2010 14:43
To: [REDACTED]
Subject: RE: 58326 CRB ABUSE COMPLAINT [Scanned by Freecom.net]

Dear Mr. [REDACTED],

Thank you for your email regarding the eligibility of various employees for Telford and Wrekin council for Enhanced CRB checks.

[REDACTED]. However, I can provide you with guidance that you may wish to bring to the attention of Telford and Wrekin Council;

1. the code of practice for Umbrella / Registered Bodies which sets out their responsibilities to submitting valid checks is found here:
<http://www.crb.homeoffice.gov.uk/PDF/Code%20of%20practice%20Apr%2009.pdf> ;
2. information about criteria – specified role in a specified place over a specified frequency - required which can be found at various points on our website :

Children are defined as up to the age of 18 and still in full time education.

A vulnerable adult is a person who is aged 18 years or older and:

- is living in residential accommodation, such as a care home or a residential special school;
- is living in sheltered housing;
- is receiving domiciliary care in his or her own home;
- is receiving any form of health care;
- is detained in a prison, remand centre, young offender institution, secure training centre or attendance centre or under the powers of the Immigration and Asylum Act 1999;
- is in contact with probation services;
- is receiving a welfare service of a description to be prescribed in regulations;
- is receiving a service or participating in an activity which is specifically targeted at people with age-related needs, disabilities or prescribed physical or mental health conditions or expectant or nursing mothers living in residential care (age-related needs includes needs associated with frailty, illness, disability or mental capacity);
- is receiving direct payments from a local authority/HSS body in lieu of social care services;
- requires assistance in the conduct of his or her own affairs.

What is regulated activity?

Regulated activity is defined as:

- Activity involving contact with children or vulnerable adults and is of a specified nature (e.g. teaching, training, care, supervision, advice, medical treatment or in certain circumstances transport) on a frequent, intensive and/or overnight basis;
- Activity involving contact with children or vulnerable adults in a specified place (e.g. schools, care homes etc), frequently or intensively;
- Fostering and childcare;

- Certain specified positions of responsibility (e.g. school governor, director of children's services, director of adult social services, trustees of certain charities)

These positions are set out in the Safeguarding Vulnerable Groups Act 2006.

What is controlled activity?

Controlled activity, which is much more limited in scope, affecting around 500,000 people, is defined as covering the work of:

- ancillary support workers in FE, NHS and adult social care (e.g. cleaner, caretaker, catering staff, receptionist) which is done frequently and gives the opportunity for contact with children or vulnerable adults
 - people working frequently for specified organisations (e.g. local authorities in the exercise of its education or social services functions) in roles which give them the opportunity for access to sensitive records about children or vulnerable adults
 - barred people can sometimes be employed in controlled activity, providing tough safeguards are in place, such as stringent supervision
 - a person barred as a result of a relevant auto bar caution or conviction will not be able to work or volunteer in controlled activity in Wales
-

What is frequently and intensively?

Frequently is currently defined as 'once a week' except for health and social care services which involves personal care when it is 'once a month'

Intensively as '4 or more days over any 30 day period'

- if an individual is undertaking '**regulated activity**', then they are eligible for an **Enhanced** level check;
- individuals undertaking '**controlled activity**' are eligible for a **Standard** check.

A list can also be found at

http://www.crb.homeoffice.gov.uk/guidance/rb_guidance/eligible_posts.aspx

3. Details received from our Policy team regarding Taxi Drivers, which basically states that unless a Taxi Driver has a contract to chauffeur children or vulnerable adults to a specified place on a specified regular basis:

The framework which all organisations should consider prior to submitting an application to the CRB is set out below:

The Rehabilitation of Offenders Act 1974 (ROA), (Exceptions) Order 1975 acts as the gateway for access to the Disclosure Service and lists those occupations, professions & positions considered to be exempt from the ROA provisions designed to protect individuals from unnecessary disclosure of their spent conviction history. Consideration of this Order must be given before an organisation submits any Disclosure request in order to determine whether a relevant exempted question is being asked. The Order allows for Disclosures to be submitted to a

Standard level.

Schedule 2 sec 4 of that Act lists Taxi driver licenses as an excepted position exempt from the ROA provisions

<http://www.opsi.gov.uk/si/si2003/20030965.htm>

To qualify for the higher level of Disclosure, Enhanced, the employment or position must be prescribed in legislation and listed in Part V of the Police Act 1997 as prescribed by Police Act 1997 (Criminal Records) (Amendment) Regulations.

Currently the issuing of a licence in respect of either a Taxi Driver or Private Hire Vehicle driver is not prescribed in regulations therefore does not meet the criteria to be submitted as an Enhanced Disclosure application.

However Safeguarding Vulnerable Groups Act (SVGA) 2006 sets out the criteria which individuals must meet to be deemed to be in Regulated Activity which is a prescribed position and therefore an Enhanced CRB check can legally be requested.

In relation to taxi drivers this means that an individual who is a taxi or PHV driver may also be a person who is contracted by a Local Authority or Care Home to regularly transport children or Vulnerable Adults. Where this occurs an Enhanced application with suitability statements may be submitted to CRB with the position applied for as E.G – DRIVER WORKING WITH CHILDREN /VULNERABLE ADULTS.

Regulated Activity in relation to children is defined in schedule 4 part 1 sections 1 and 2. Regulated Activity can also be met if the individual meets the criteria by working in an Establishment listed in section 3 of schedule 4 or by holding a position listed in section 4 of that section.

Regulated Activity also requires that the individual must be carrying out those duties Frequently or Intensively. Frequently is currently defined as once a week or more and .Intensively is defined as where an activity takes place on more than 3 days in a 30 day period; or overnight (between 2am and 6am).

Regulated Activity in relation to Vulnerable Adults is defined in schedule 4 part 2 sections 7 and 8.

The definition of a child for SVGA purposes is an individual under 18. The definition of a Vulnerable Adult for SVGA purposes is an individual over 18 who meets the conditions listed in section 59 of the Act.

Taxi and PHV licensing applications are not a specified position in SVGA, however in certain circumstances individuals who provided transport will be regulated activity only when it is solely for children or vulnerable adults to and from regulated activity AND it is organised by the providers of the regulated activity or an organisation working on their behalf e.g Local Authority school contract or NHS or Care Home contract

It is not regulated activity if a child/Vulnerable Adult hires a taxi in the street.

Link to the Act below;

http://www.opsi.gov.uk/acts/acts2006/ukpga_20060047_en_1



I hope this information is of help to you and thank you for your diligence in this matter.

Yours sincerely,

Carol Flynn.

CRB Customer Services

☎ 0870 90 90 811 | ✉ customerservices@crb.gsi.gov.uk | 🌐 www.crb.gov.uk
Criminal Records Bureau, PO Box 110, Liverpool, L69 3EF

For more information about CRB please visit our website or contact our Call Centre which is open 6 days a week, 8am to 8pm weekdays and 10am to 5pm on Saturday.

Did you know you can track your CRB application(s) online at www.crb.gov.uk/tracking

Am fwy o wybodaeth am y Swyddfa Cofnodion Troseddol (CRB) ymwelwch â'n wefan neu cysylltwch â'n canolfan alwadau sy'n agored 6 diwrnod yr wythnos 8 y.b. hyd at 8 y.h. ar ddyddiadau gwaith ac 10 y.b. hyd at 5 y.h. ar Ddydd Sadwrn. Os hoffwch siarad yn Gymraeg ffoniwch ein llinell Cymraeg neilltuol ar 0870 90 90 223 sy'n agored Dydd Llun i Ddydd Gwener 9 y.b. hyd at 5 y.p. A ydych yn gwybod y gellir olrhain eich cais ar lein ar www.crb.gov.uk/tracking